

CONVERSION OF CEMETERIES ACT.

New South Wales



ANNO VICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 17, 1974.

An Act to enable cemeteries under the control of councils to be dedicated as public parks; to provide for the appointment of the council as trustee thereof; to confer and impose certain powers, authorities, duties and functions on the council as trustee of such a public park; to dedicate the Bodangora General Cemetery in the Shire of Wellington as a public park; and for purposes connected therewith. [Assented to, 10th April, 1974.]

BE

No. 17, 1974 **BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

Short title. **1.** This Act may be cited as the "Conversion of Cemeteries Act, 1974".

Commence-ment. **2.** (1) This section and section 1 shall commence on the date of assent to this Act.

(2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette being a day not earlier than the day on which the Crown Lands and Other Acts (Reserves) Amendment Act, 1974, commences.

Division of Act. **3.** This Act is divided as follows :—

PART I.—PRELIMINARY—ss. 1–5.

PART II.—DEDICATION OF CEMETERIES AS PUBLIC PARKS—ss. 6–10.

PART III.—POWERS, AUTHORITIES, DUTIES AND FUNCTIONS OF A COUNCIL WITH RESPECT TO CONVERSION LAND—ss. 11–17.

PART IV.—MISCELLANEOUS—ss. 18–20.

SCHEDULE 1.—APPLICATION OF ACT TO LAND DESCRIBED IN SCHEDULE 2.

SCHEDULE 2.—BODANGORA GENERAL CEMETERY.

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4. In this Act, except in so far as the context or subject-matter otherwise indicates or requires— No. 17, 1974

“area” has the meaning ascribed thereto in the Local Government Act, 1919;

Interpreta-
tion.

“cemetery” means a cemetery of which a council has the care, control and management;

“council” has the meaning ascribed thereto in the Local Government Act, 1919;

“monument” means a monument, headstone or other surface structure, or a vault ;

“resolution” means a resolution of a council under section 6 (1) ;

“the conversion date”, in relation to land within a cemetery, means the day on which a declaration made by the Minister under section 10 (1) in respect of that land is published in the Gazette ;

“the conversion land”, in relation to land within a cemetery, means the land declared by the Minister to be a public park under section 10 (1).

5. The provisions of this Act shall have effect notwithstanding anything contained in the Local Government Act, 1919.

Act to have
effect not-
withstanding
Local
Government
Act, 1919.

PART II.

DEDICATION OF CEMETERIES AS PUBLIC PARKS.

6. (1) A council may, by resolution, decide to apply under this Act for the conversion of the whole or any part of land within a cemetery into a public park.

Council
may resolve
to convert
cemetery.

(2)

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(2) The council shall give notice of the resolution twice at an interval of not less than two weeks in a newspaper or newspapers published and circulating in the locality and twice at an interval of not less than two weeks in a newspaper or newspapers published in Sydney and circulating widely throughout New South Wales.

Objections.

7. (1) A person may, within three months after the date of first publication of the notice referred to in section 6 (2), object in writing to the council against its resolution and shall state the grounds for his objection.

(2) The council shall consider and determine all objections made under subsection (1) and shall notify each objector of its determination concerning his objection.

Council
may apply
to have
cemetery
declared a
public park.

8. (1) The council may, after considering and determining the objections made under section 7 (1), make application to the Minister that the whole or any part of the land referred to in the resolution be declared a public park.

(2) An application under subsection (1) shall be made in writing addressed to the Minister and shall be accompanied by—

- (a) details of the proposal to convert the cemetery into a public park in the nature of a rest park;
- (b) information, so far as it can be obtained, indicating, in respect of the cemetery—
 - (i) the total number of burials;
 - (ii) the dates of the first and last burials;
 - (iii) the number of monuments;
 - (iv) the number of monuments which have been provided or maintained by the Commonwealth War Graves Commission;

(v)

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- (v) whether the monuments are proposed to be removed, re-arranged within the cemetery, relocated in another cemetery, or disposed of; No. 17, 1974
 - (vi) the number of outstanding exclusive rights to burial;
 - (vii) the number of graves for which money is held for perpetual care;
 - (viii) the amount of money held for the perpetual care of graves;
 - (ix) the amount of money held otherwise than for the perpetual care of graves; and
 - (x) the nature and proposed future use of any building erected on the land;
- (c) estimates of the costs of—
- (i) the conversion of the cemetery into a public park; and
 - (ii) the future annual maintenance of the land, and information stating the means by which the council proposes to meet those costs;
- (d) evidence of compliance by the council with section 6 (2);
- (e) copies of all objections received by the council pursuant to section 7 (1) and of the council's determinations in respect of those objections; and
- (f) such other information as may be prescribed.

(3) The council shall furnish such additional or other information as the Minister, by request in writing, may require for the purpose of considering the application under subsection (1).

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No. 17, 1974 **9.** (1) If the Minister is of the opinion that the conversion into a public park of the land or any part of the land referred to in the resolution is desirable, he may cause to be published in the Gazette a notification of his intention to declare that land or part, as the case may be, to be a public park.

Minister
may notify
intention to
declare
cemetery a
public park.

(2) A copy of the notification under subsection (1) shall be laid before each House of Parliament within fourteen sitting days of that House after the date of publication.

(3) If either House of Parliament passes a resolution of which notice has been given within fifteen sitting days of that House after a copy of the notification under subsection (1) has been laid before it, that it does not assent to the declaration of the land referred to in that notification as a public park, the Minister shall not make that declaration pursuant to that notification.

(4) For the purposes of subsections (2) and (3), sitting days shall be counted, whether or not they occur during the same session.

10. (1) Subject to section 9, the Minister may declare, by notification in the Gazette, the whole or any part of land within a cemetery to be a public park.

Minister
may declare
cemetery
to be a
public park.

(2) The land declared to be a public park under subsection (1) shall be deemed to have been dedicated as a public park under section 24 of the Crown Lands Consolidation Act, 1913.

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PART III.

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POWERS, AUTHORITIES, DUTIES AND FUNCTIONS OF A
COUNCIL WITH RESPECT TO CONVERSION LAND.

11. (1) On the conversion date—

- (a) any estate or interest in the conversion land which, immediately before the conversion date, was vested in or held by any person or body of persons or the council shall be divested;
- (b) any person or body referred to in paragraph (a) and the council shall be discharged from any duties, liabilities or obligations existing immediately before the conversion date in respect of or in relation to the conversion land;
- (c) any trusts, conditions, encumbrances, dedications or reservations affecting the conversion land immediately before the conversion date shall be revoked and annulled;
- (d) any Crown grants issued in respect of any part of or including any part of the conversion land and subsisting immediately before the conversion date shall be cancelled in so far as they relate to the conversion land; and
- (e) any money, securities or assets held by the council in respect of the conversion land or of any grave or monument in or on the conversion land immediately before the conversion date shall be freed from any conditions or trusts subject to or on which they were held immediately before that date and shall be used by the council for or towards maintaining the graves or monuments preserved pursuant to section 14 or for or towards maintaining the conversion land as a rest park.

Divesting
of estate,
interest,
etc., in
conversion
land on
conversion
date.

(2) Any person who immediately before the conversion date was the holder of, or who was entitled to be the holder (either at law or in equity) of, any exclusive right to burial within the conversion land may, within a period of six

months

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No. 17, 1974 months after the conversion date, apply in writing to the Minister to be granted a fresh exclusive right to burial and the Minister shall, as soon as practicable after any application has been so made, arrange for the provision to that person of a new burial site in a cemetery selected at the discretion of the Minister.

**Council
sole trustee
of conver-
sion land.**

12. (1) Subject to this Act, the council shall be sole trustee of the conversion land and shall be deemed to have been appointed sole trustee under section 37P of the Crown Lands Consolidation Act, 1913.

(2) The conversion land shall be maintained by the council as a rest park and, notwithstanding anything in any other Act, but subject to the provisions of this Act, the council shall not use the conversion land or permit it to be used for any other purpose.

**Duties and
powers of
council in
relation to
conversion
land.**

13. (1) In this section, a reference to a burial register includes a reference to any register or record in respect of the deaths or interments of persons who are buried in or whose ashes have been placed in or on the conversion land.

(2) The council shall, as soon as practicable after the conversion date—

- (a) where a burial register is held or received by it and that register is, in the opinion of the Minister, adequate and complete, deposit the burial register at the Mitchell Library, Sydney, where it shall be maintained so as to be available for inspection by any interested person from time to time;
- (b) where a burial register is held or received by it and that register is not, in the opinion of the Minister, adequate or complete—
 - (i) compile a supplementary register of the names of and other relevant information in respect of persons who are buried in or whose ashes have been placed in or on the conversion

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conversion land, so far as those names and that information can by reasonable diligence be obtained and so far as those names and that information are not included in the burial register; and

- (ii) deposit the burial register and the supplementary register compiled under subparagraph (i) at the Mitchell Library, Sydney, where they shall be maintained so as to be available for inspection by any interested person from time to time; or
- (c) where no burial register exists—
- (i) compile a register of the names of and other relevant information in respect of persons who are buried in or whose ashes have been placed in or on the conversion land, so far as those names and that information can by reasonable diligence be obtained and deposit and maintain that register at the offices of the council, so as to be available for inspection by any interested person from time to time;
 - (ii) furnish a certified copy of the register to the Minister if required to do so by him; and
 - (iii) furnish a certified copy of the register to the Mitchell Library, Sydney, where it shall be maintained so as to be available for inspection by any interested person from time to time.

(3) In addition to the duties conferred on the council under subsection (2), the council shall, as soon as practicable after the conversion date—

- (a) convert the conversion land into a rest park; and
- (b) erect a memorial in a suitable position on the conversion land indicating—
 - (i) the sacred nature of the area; and

(ii)

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- (ii) the place where the burial register, the supplementary register compiled under subsection (2) (b) (i) or the register compiled under subsection (2) (c) (i), as the case may be, may be inspected and, as the case may be, that a copy of the register compiled under subsection (2) (c) (i) may be inspected at the Mitchell Library, Sydney.

(4) The council may grant to the Commonwealth War Graves Commission the right to erect and maintain, in or on the conversion land, a memorial to any person who is buried in or whose ashes have been placed in or on the conversion land and over whose grave that Commission has provided or maintained a monument.

(5) Subject to this Act, the council may do all such other things as it may consider necessary to convert the conversion land into a rest park.

Preservation
of certain
monuments.

14. (1) The council shall, subject to section 15, preserve in its existing position on the conversion land or remove and preserve in a new position, as provided in subsection (2)—

- (a) any monument which—
- (i) is erected over any grave which, in the opinion of the council, is of historical importance; and
 - (ii) is, in the opinion of the council, reasonably capable of being preserved; and
- (b) any monument erected over any grave in respect of which the council holds any money, securities or assets for the perpetual care of that grave.

(2) The new position in which a monument removed by the council pursuant to subsection (1) shall be preserved shall, at the discretion of the council, be anywhere on the conversion land or in another cemetery, whether that other cemetery is a cemetery within the meaning of this Act or otherwise.

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(3) Subject to section 15, the council may remove such other monuments erected on the conversion land as it thinks fit, and dispose of them at its discretion. No. 17, 1974

(4) Before determining which of the monuments the council will preserve, or remove and preserve pursuant to subsection (1), or remove pursuant to subsection (3), the council shall take into consideration any views of—

- (a) the Royal Australian Historical Society relating to the historical importance of each or any monument; and
- (b) the Commonwealth War Graves Commission relating to any monument provided or maintained by it,

which are furnished to the council within three months of the conversion date.

(5) If any monument preserved in accordance with subsection (1) ceases at any time after the expiration of the period of three months referred to in section 15 (3) by reason of its condition to be, in the opinion of the council, reasonably capable of being preserved, the council may dispose of it at its discretion.

15. (1) At least three months before any monuments are removed by the council pursuant to section 14 (1) or (3), an advertisement of the intention to remove them and drawing attention to the right conferred by subsection (3) on the representatives or persons claiming to be representatives referred to in subsection (3) shall be inserted twice at an interval of not less than two weeks in a newspaper or newspapers published and circulating in the locality, and twice at an interval of not less than two weeks in a newspaper or newspapers published in Sydney and circulating widely throughout New South Wales. Advertisement to be published before removal of monuments.

(2) The council shall send a copy of the advertisement referred to in subsection (1) to the Commonwealth War Graves Commission within one week after the date of publication of the first advertisement referred to in subsection (1).

(3)

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(3) At any time after the publication of the first advertisement referred to in subsection (1) and before the expiration of three months after the publication of the last of those advertisements—

- (a) the representatives or any persons claiming to be representatives of any person who is buried in or whose ashes have been placed in or on the conversion land; or
- (b) subject to subsection (4), the Commonwealth War Graves Commission,

may, at their or its own expense, and with the permission of the council, remove the monument erected over the grave of or in respect of that person, whether or not that monument is one which is referred to in section 14 (1), and may, at their or its own expense, and with the permission of the Health Commission of New South Wales, remove the remains or ashes of that person to another cemetery for burial, whether that other cemetery is a cemetery within the meaning of this Act or otherwise, or to a crematorium for cremation.

(4) Subsection (3) does not authorise the Commonwealth War Graves Commission—

- (a) to remove a monument unless that Commission has provided or maintained the monument; or
- (b) to remove the remains or ashes of a person unless that Commission has provided or maintained a monument over the grave of or in respect of that person in or on the conversion land.

Remains not
to be
disturbed.

16. (1) The council, the Commonwealth War Graves Commission or any person or body of persons shall take due care not to unearth or disturb the remains of any person who is buried in, or the ashes of any person which have been placed in or on, the conversion land.

(2) If any remains or ashes referred to in subsection (1) are unearthed or disturbed, the council shall cause those remains or ashes to be reverently interred anywhere in the conversion land.

(3)

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(3) Nothing in this section prevents the removing of any remains or ashes pursuant to section 15 (3). No. 17, 1974

17. (1) The council may maintain any building erected on the conversion land at the conversion date and may, from time to time, repair, rebuild or replace it. Maintenance, etc., of building on conversion land.

(2) If any building referred to in subsection (1) is a dwelling, that dwelling may, with the approval of the council, be used as a residence for a caretaker or groundsman of the conversion land, upon such terms and conditions as may be agreed upon from time to time between the council and the caretaker or groundsman, as the case may be.

(3) So long as the land on which any dwelling is erected is so used for the purposes of a residence for a caretaker or groundsman of the conversion land, the public shall not be entitled to enter upon or use it, or any land which is within the curtilage of the dwelling and is bounded by a substantial fence, as a public park.

(4) Notwithstanding the provisions of subsections (2) and (3), the council may use any dwelling, and the land within the curtilage of the dwelling and bounded by a substantial fence, for such other purposes and subject to such terms and conditions as the Minister may approve in writing.

(5) A reference in this section to any building, being a dwelling or otherwise, erected on the conversion land at the conversion date includes a reference to that building as repaired, rebuilt or replaced from time to time under the provisions of this section.

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PART IV.

MISCELLANEOUS.

No compensation payable.

18. Except where otherwise in this Act expressly provided, no compensation shall be payable to any person or body of persons in respect of the divesting of any estate or interest by this Act or in respect of the performance of any act authorised by this Act.

Regulations.

19. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Regulations may be made so as to apply differently according to such factors as may be specified in the regulations.

Bodangora General Cemetery.

20. Schedule 1 has effect.

Sec. 20.

SCHEDULE 1.

APPLICATION OF ACT TO LAND DESCRIBED IN SCHEDULE 2.

Land in Schedule 2 deemed to be a public park.

1. Upon the commencement of this Act, the land described in Schedule 2 shall be deemed to have been—

- (a) declared a public park under section 10 (1); and
- (b) dedicated as a public park under section 24 of the Crown Lands Consolidation Act, 1913.

Application of Parts III and IV to land in Schedule 2.

2. (1) The provisions of Parts III and IV shall apply to the land described in Schedule 2.

(2)

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(2) In applying the provisions of Parts III and IV to the land No. 17, 1974 described in Schedule 2—

“conversion date” means the date of commencement of this Act;

“conversion land” means the land described in Schedule 2;

“council” means the Council of the Shire of Wellington.

SCHEDULE 2.

BODANGORA GENERAL CEMETERY.

Sched. 1.

ALL THAT piece or parcel of land containing an area of 1.416 hectares or thereabouts situated at Bodangora, Shire Wellington, County Bligh, Parish Nanima, dedicated 6th September, 1899, for General Cemetery and shown on plan Ms. 434 Oe. in the Department of Lands, Sydney.

DEFAMATION